

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of POWELL, Minors.

UNPUBLISHED

June 17, 2014

No. 318659

Wayne Circuit Court

Family Division

LC No. 07-474016-NA

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In the Matter of POWELL, Minors.

No. 318670

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Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 318659, respondent-mother (“Powell”) appeals by right the trial court’s order terminating her parental rights to her three minor children pursuant to MCL 712A.19b(3)(b)(iii), (c)(i), (g), and (j). In Docket No. 318670, respondent-father (“Lofton”) appeals by right the trial court’s order terminating his parental rights to his two minor children pursuant to the same statutory subsections. We affirm in both appeals.

**I. FACTUAL BACKGROUND**

This case has a history dating back to November 2007. The court assumed jurisdiction over the oldest minor child, J.P., because of domestic violence in the home, Powell’s drug, employment, and housing issues, and sexual assault of J.P. by Powell’s then-husband. Powell participated in a treatment plan. In February 2010, the court returned the child to Powell, who had recently given birth to the minor child, I.M.P.

In June 2010, the court authorized petitions seeking jurisdiction over I.M.P. and a change of placement for J.P. The court found that Powell had been working on a treatment plan since 2007, that she had a fight with her mother and was put out of that home, and that she then disappeared with the children. The court further found that Powell continued to expose J.P. to Lofton although J.P. was afraid of him. The court entered orders of adjudication regarding both children, continued its prior orders and services for Powell, and ordered Lofton to participate in various services. The court assumed jurisdiction over I.P. shortly after his birth in April 2011,

because respondents were working on treatment plans and the other children were still in foster care. In September 2011, the court returned the three children to Powell's care with reunification services in place. In November 2011, the court terminated its jurisdiction over all three children and released the children to Powell because she had successfully completed her treatment plan. The Department of Human Services ("DHS") requested that Lofton leave the home due to his continued drug use.

Less than six months later, a petition was filed seeking court jurisdiction over the children again and termination of both respondents' parental rights. The petition recited the past history, alleged that J.P. disclosed that Lofton had sexually abused her, and alleged that Powell continued to expose the child to Lofton after the alleged abuse. After January 2013, the petition was dismissed as stale. An updated termination petition was then filed containing primarily the same allegations. Following a hearing, the court terminated respondents' parental rights. This appeal followed.

## II. JURISDICTION

Powell argues that the trial court erred by exercising jurisdiction over the children under MCL 712A.2(b)(1) and (2). We disagree.

This Court reviews the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. Jurisdiction must be established by a preponderance of the evidence." *Id.*

MCL 712A.2 sets forth the bases for exercising jurisdiction, and provides in pertinent part that the trial court may exercise:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

\* \* \*

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

In this case, there was evidence that Lofton sexually assaulted J.P. in the home and that Powell continued to expose her children to Lofton after J.P. revealed the assault. There was also evidence that the home was in a deplorable condition just before the removal, and that domestic violence and substance abuse was present in the home. Given these circumstances, the trial court

did not clearly err by exercising jurisdiction over the children under the provisions of MCL 712A.2(b). Although respondents denied the various allegations, the court's decision was based on its assessment of the credibility of the various witnesses. MCR 2.613(C); MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

### III. STATUTORY GROUNDS

Both respondents argue that the trial court erred by finding that the statutory grounds for termination had been established by clear and convincing evidence. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Respondents' parental rights were terminated under MCL 712A.19b(3)(b)(iii), (c)(i), (g), and (j), which permit termination of parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

\* \* \*

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

There was clear and convincing evidence to establish that Lofton sexually abused J.P. and that Powell continued to expose the children to him after the abuse occurred. Powell continued her relationship with Lofton despite his domestic violence and drug use. The evidence established that Powell had not fully resolved her own long-standing issues of domestic violence, drug use, and disregard of her children's safety, despite her lengthy prior involvement with services to resolve those issues. The trial court properly determined that the statutory grounds for termination set forth in §§ (3)(b)(iii), (g), and (j) had been established by clear and convincing evidence.

Nor did the trial court err by determining that these same statutory grounds had been satisfied with respect to Lofton, particularly in light of the evidence that Lofton sexually abused J.P., the half-sibling of his own two children. Lofton's treatment of J.P. was probative of how he would treat his own children. *In re HRC*, 286 Mich App 444, 460-461; 781 NW2d 105 (2009). Moreover, Lofton continued to be a perpetrator of domestic violence despite the fact that he had previously participated in domestic-violence and anger-management counseling. The trial court properly determined that the evidence against Lofton was sufficient to establish the statutory grounds for termination set forth in §§ (3)(b)(iii), (g), and (j).<sup>1</sup>

#### IV. BEST INTERESTS

Both respondents also argue that the trial court erred by concluding that termination was in the children's best interests. We disagree.

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). We review the trial court's best-interests determination for clear error. MCR 3.977(K).

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<sup>1</sup> We need not determine whether the trial court erred by relying on § (3)(c)(i) because only one statutory ground need be established to support the termination of a respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). We do note, however, that § (3)(c)(i) is not an appropriate statutory ground for termination when termination is sought at the initial dispositional hearing. See MCR 3.977(E)(3)(b).

There was evidence that respondents were bonded with their children. Despite that bond, however, J.P. did not want to be returned to Powell's care. J.P. was content to stay with her maternal grandmother. The younger children were staying with Lofton's sister, who was interested in adopting them. Moreover, the evidence established that all the children needed stability and permanency, but that respondents had serious issues that hindered their ability to provide that. Given these circumstances, the trial court's determination that termination of respondents' parental rights was in the children's best interests is fully supported by the evidence and is not clearly erroneous.

Affirmed.

/s/ Kathleen Jansen  
/s/ Christopher M. Murray  
/s/ Mark T. Boonstra